

November 8, 2010

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Shawn M. Garvin  
Regional Administrator  
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Dear Ms. Jackson and Mr. Garvin:

We are writing on behalf of The Nature Conservancy's six state programs that include portions of the Chesapeake Bay watershed to comment on EPA's proposed Chesapeake Bay TMDL and the accountability framework that EPA has developed to ensure that the pollution reductions called for in the TMDL are achieved. We believe that it is both possible and essential to achieve water quality standards in the Chesapeake Bay, and we support the approach that is reflected in the draft TMDL and accountability framework.

The mission of The Nature Conservancy (the Conservancy) is to preserve the plants, animals and natural communities that represent the diversity of life on Earth by protecting the lands and waters they need to survive. With the support of more than one million members, the Conservancy has protected more than 120 million acres and 5,000 river miles around the world, and currently has more than 150 marine conservation projects in 32 countries and in every coastal state in the U.S.

Recognizing the significant ecological, economic, and cultural values of the Chesapeake Bay and its tributaries, as well as the many stresses that diminish those values, we established our Chesapeake Bay program in 2005. Our work to help conserve the Bay's most intact habitats and restore some of its degraded, but still essential, habitats and ecological processes is part of a national effort by the Conservancy to address threats and pursue lasting conservation results at the ecosystem or watershed scale.

Many of the large freshwater and estuarine systems where we work, the Chesapeake Bay included, suffer from eutrophication and excess sediment loads. As you are well aware, these are some of the most difficult water quality issues to address, and the Chesapeake Bay is an excellent, albeit unfortunate, example of this challenge. While Bay cleanup efforts over the years have yielded some success, especially when measured against a "no action" baseline, target deadlines for achieving significant pollution reductions in 2000 and 2010 were missed by a wide margin. In order to successfully move beyond the disappointments of the past, it is essential that all levels of government within the Bay watershed fully commit to a predictable structure for

reducing pollution in the Bay. EPA is providing critical leadership in fully utilizing the tools provided by the Clean Water Act to establish a TMDL and ensure the necessary pollution reductions.

We commend EPA for incorporating the following elements into the TMDL and accountability framework:

1. Setting a hard cap while providing flexibility for achieving the cap. In setting clear pollution limits and allowing Bay jurisdictions, through Watershed Implementation Plans, to determine how they are going to achieve those limits, EPA is establishing an appropriate balance between assuring accountability and providing an opportunity for jurisdictions to innovate and tailor their efforts to local conditions. Particularly with regard to nonpoint sources of pollution, the states are in the best position to determine how to achieve the reductions that are needed. States are also best able to decide how to allocate reductions among different source sectors.
2. Providing for continuous accountability through the two-year milestones. Previous Bay cleanup efforts have suffered from deadlines that were often too distant to spur the immediate actions that were required. The two-year milestones will guard against complacency and assure that reductions are achieved in a predictable fashion. If early milestones are not met, all interested parties will know what additional actions will be required to “catch up” by the next milestone. This transparency is an essential element of the accountability framework.
3. Tracking and assessment of restoration progress. It is important to not only track the actions being taken by governments and source sectors to reduce pollution, but also to monitor the effects of these actions on water quality. For the Conservancy, the protection and enhancement of living resources in the Bay, its tributaries, and embayments are the measures by which we will determine whether Bay restoration efforts have been successful. We applaud EPA for ensuring that pollution reductions both occur and have the intended effect on water quality, the human populations that depend on the Bay for their livelihoods and quality of life, and the plants, animals and natural communities that live in the water.
4. Providing necessary federal backstop actions but seeking to avoid reliance on such an approach. Unfortunately, the history of Bay restoration efforts demonstrates that there are so many players involved that success is unlikely unless one entity with sufficient enforcement authority ultimately takes the lead. The Conservancy hopes that many of the federal backstop actions EPA has outlined will prove unnecessary, and we know you share this sentiment. We do commend EPA, however, for clearly laying out the consequences if states and other jurisdictions fail to achieve pollution reductions through their own plans.

At this stage, we would like to offer one comment on how EPA might strengthen the TMDL moving forward. Specifically, we encourage EPA to provide guidance on how the Phase 2 WIPs should address the need to protect those places in the Bay watershed that have not yet suffered significant degradation. As EPA is well aware, we cannot restore the Chesapeake Bay unless we protect healthy waters at the same time we are improving degraded ones. A balanced approach to water quality management that includes the protection of healthy waters is not only more cost-effective than reducing pollution after degradation occurs, it is also essential to ensure that the scope and scale of the problem does not continue to worsen. Beyond the existing safeguards in Appendix S of the TMDL, EPA should consider providing additional requirements in its offset program to ensure that new loads do not compromise healthy watersheds, as identified through state and federal programs. Ensuring that Phase 2 WIPs account for local land and water protection efforts will also encourage local community buy-in in places far from the mainstem Chesapeake Bay, while supporting reasonable assurance that pollution caps can be maintained into the future.

The Chesapeake Bay is one of the most productive estuaries in the world, supports an abundance of biological diversity, and provides some of the Atlantic coast's most critical breeding, nursery, and stopover habitat for marine and avian species. The Bay is an economic engine that supports commercial and recreational fisheries as well as other industries. The Bay is also central to the cultural identity of the Mid-Atlantic region and a recognized national treasure. However, the Bay's current degraded status diminishes these values, and all of us, both directly and indirectly, bear the significant costs of an impaired Chesapeake.

Thus, it would be difficult to overstate the importance of EPA's renewed emphasis on restoring the Bay, specifically the creation and implementation of the TMDL. If EPA continues to provide firm but fair leadership and if all interested parties commit to working together towards shared goals, we believe the Chesapeake Bay TMDL will not only produce the desired results in the Bay and its tributaries but will also serve as a model for cleaning up waters across the country.

Thank you for the opportunity to offer these comments. If you have any questions, please contact Mark Bryer, Director of the Conservancy's Chesapeake Bay Program, at 301-897-8570 x229 or [mbryer@tnc.org](mailto:mbryer@tnc.org).

Most sincerely,



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Maryland/DC State Director



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cc:  
Water Docket  
Environmental Protection Agency